



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

Mr. Terry Trimble
Interim Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR96-2393

Dear Mr. Trimble:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101931.

The Texas Department of Human Services (the "department") received a request for the following information:

1. Proposal documentation prepared by competing vendors in response to the LSIS RFO
2. Documentation prepared by competing vendors in response to TDHS questions and clarifications during negotiations
3. Evaluation report comparing the vendor's offers prepared by the Texas Department of Human Services.

You have submitted the requested information to this office for review. You state that releasing the information responsive to items 1 and 2 of the request would implicate the property interests of the third parties who submitted the information to the department. Therefore, you believe that the information may be excepted from disclosure under section 552.110 of the Government Code. You also contend that portions of the requested evaluation report are excepted from disclosure pursuant to section 552.111 of the Government Code.

Pursuant to section 552.305 of the Government Code, we notified the third parties whose proprietary interests are implicated by the request of their opportunity to claim that the information they submitted to the department is excepted from disclosure. The third parties did not respond to our notification.

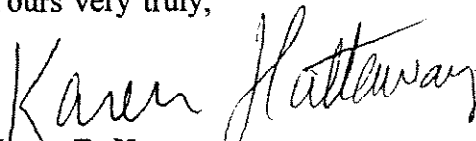
As neither the department nor the third parties have provided us with written comments explaining how section 552.110 may apply to the information responsive to items 1 and 2 of the request, we have no basis upon which to pronounce the information protected by section 552.110. Open Records Decision No. 363 (1983). Accordingly, we conclude that the information is not excepted from required public disclosure and must be released to the requestor.

As for item 3 of the request, you claim that section 552.111 excepts the opinion portions of the evaluation report from disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

You have marked the portions of the evaluation report that you believe reflect the opinions of the evaluators as to the quality of the submissions that competing vendors prepared in response to the department's request for offers regarding a fingerprint imaging system. You explain that the fingerprint imaging system project relates to the department's administration of public assistance programs, one of the department's primary policymaking functions. Based on these assertions, we conclude that the department may withhold the marked portions of the evaluation report pursuant to section 552.111. Of course, the department must release the unmarked portions of the report to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101931

Enclosures: Submitted documents

cc: Mr. William S. Riippi
Vice President, Business Development
North American MORPHO Systems, Inc.
1145 Broadway Plaza
Tacoma, Washington 98402
(w/o enclosures)

EDS Corporation
11625 Natrona Drive
Austin, Texas 78759
(w/o enclosures)

Unisys Corporation
9050 N. Capital of Texas Hwy.
Austin, Texas 78759
(w/o enclosures)